

DISPOSITION OF THE PROCEEDS OF THE AWARD OF COMPENSATORY DAMAGES IN *PPL MONTANA, LLC v. STATE OF MONTANA*

On June 13, 2008, the First Judicial District Court determined that the use of state school trust navigable riverbed lands for power generation subjected PPL to the payment of rents under the Hydroelectric Resources Act, M.C.A. §77-4-201. PPL Montana, LLC v. State of Montana, CDV-2004-846. The District Court Decision granted the trust damages to compensate for the wrongful use of the navigable riverbeds for the calendar years 2000-2007 in the amount of \$40,956,180.00, plus 10% interest from the date of the decision. The Decision is currently on appeal to the Montana Supreme Court. The award of compensatory damages in the case leaves to the Board of Land Commissioners the determination of full market value for future rents and for establishing the terms and conditions for entering into a future lease with PPL Montana, LLC. under the Montana Hydroelectric Resources lease provisions at §77-4-201, et. seq.

The award of compensatory damages for PPL's trespass and occupation of the riverbeds represents neither a permanent disposition of trust lands nor is it payment under a riverbed lease. The compensatory damages are also not interest and income subject to distribution.

Based upon the discussion above, the Department has reviewed the Constitution and prepared the following resolution for the consideration of the Board of Land Commissioners:

**RESOLUTION OF THE MONTANA BOARD OF LAND COMMISSIONERS FOR
DISPOSITION OF PROCEEDS OF THE AWARD OF COMPENSATORY
DAMAGES IN *PPL MONTANA, LLC v. STATE OF MONTANA*
December 15, 2008**

WHEREAS, on June 13, 2008, the Montana First Judicial District Court, Lewis and Clark County, issued its decision in *PPL Montana, LLC v. State of Montana*, Cause No. CDV-2004-846, that the use of state school trust navigable riverbed lands for power generation subjected PPL to the payment of rents under Montana's hydroelectric resources laws, found at Title 77, chapter 4, part 2, MCA; and

WHEREAS, the District Court entered judgment for the State of Montana and against PPL Montana, which judgment included payment of compensatory damages in the amount of \$40,956,180.00 with post-judgment interest at the rate of 10% annually; and

WHEREAS, the District Court further held that the Board of Land Commissioners is responsible for approving the terms of leases of Montana's navigable riverbeds under the state hydroelectric resources laws, including provisions for calculation of future rents; and

WHEREAS, PPL has appealed the District Court decision to the Montana Supreme Court; and

WHEREAS, the State of Montana must include the damage award in its records for accounting purposes; and

WHEREAS, the District Court's award of compensatory damages for PPL's occupation of the navigable riverbeds represents neither a permanent disposition of trust lands nor the payment of money under a lease; and

WHEREAS, consistent with the Montana Constitution, Montana statutes, and Montana case law, including *Montanans for Responsible Use of School Trust v. Darkenwald*, 2005 Mont. 190, the Land Board must obtain full market value for future rents and must manage the school trust for the benefit of both current and future beneficiaries.

NOW, THEREFORE, the Board of Land Commissioners hereby:

1. Determines that it is in the best interest of the current and future beneficiaries of the common schools trust, and it is consistent with § 77-1-125, MCA, to secure the compensatory damages to the State of Montana in *PPL Montana, LLC v. State of Montana* in a manner that will compensate the trust for past damages to school trust lands and continue to generate revenue both now and into the future.
2. Directs that when the judgment in the litigation is paid to the State, the entire amount of the compensatory damages, including all post-judgment interest, be deposited in the Common School Trust in the state land bank fund established in § 77-2-362, MCA, so that the *res* of the trust will be enhanced and preserved, and further directs the Department of Natural Resources and Conservation to presently account for the money accordingly.
3. Expressly reserves Board of Land Commissioners authority to determine the full market value, based upon the shared net benefit methodology, and to determine all other terms and conditions of future leases of state school trust navigable riverbed lands under Montana's hydroelectric resources laws.